

# Bay Engineering Inc.

Engineers, Planners and Surveyors



September 25, 2014

Revised December 10, 2014

Frank Biba, Chief of Environmental Programs  
City of Annapolis  
Department of Neighborhood & Environmental Program  
145 Gorman Street, 3<sup>rd</sup> Floor  
Annapolis, MD 21401

Re: Forest Conservation Act Variance request for tree removal  
3 Milkshake Lane PD-2012-001

Dear Biba:

The purpose of this letter is to formally request a variance in accordance with the Natural Resources Article of Annotated Code of Maryland for the above referenced development. A copy of the approved Forest Conservation Plans is enclosed for your use in reviewing the variance request.

Natural Resources Article Title 5, Subtitle 16, Sections 5-1607 (c) (2) states that certain trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and that the applicant will need to demonstrate that they qualify for a variance in order to be removed. "Any tree" for this development refers to any tree that is part of a historic site or associated with a historic structure which during the Forest Stand review process has been determined by the City of Annapolis to be 50 years and older. The intent of Natural Resources Article Title 5, Subtitle 16, Section 5-1607 (c)(2)(ii) is to preserve the relationship between a historic site/structure and the trees on the site/near the structure. In addition, any tree that is equal to or greater than 30" in diameter, when measured at 4' above the base of the trunk, require a variance for removal. Subsequently, based on the approved Forest Conservation Plan and pending approval of the site development (PD 2012-001) the applicant is requesting a variance to remove tree ID #10, 13, 50, 56, 63 and 92. These trees are each located inside the limit of disturbance (LOD) and will be impacted by proposed grading/development activities. Tree #20, while not located within the LOD, is in poor condition and would present a safety hazard to the development and surrounding trees slated for preservation, and therefore the removal of this tree is included in our request.

A summary of each of the trees to be removed requiring a variance are as follows:

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**TREE #**            **10**

**DESCRIPTION**

22" Elm

**CONDITION**

FAIR (59%)

Exhibits some crown dieback, crown decline, thinning crown, and vines.

**PHOTO**



## REASON FOR REMOVAL

This tree is located within the access road which has been located in the area of the existing driveway.

## ALTERNATIVES ANALYSIS

The tree is located within the proposed access road. The sole access to the property is from Milkshake Lane. In locating the property entrance, key elements considered were:

1. Minimize impact to the trees along the property frontage.
2. Preserve the landscaped "island" on Milkshake Lane
3. Preserve the grandest of trees associated with the Historic House

The following illustration details potential access points to the property, with tree #10 highlighted in red:



In analyzing alternative entry points that would preserve tree #10, the resultant impacts were far greater than the entry point selected:

- A. Would require a breakthrough in the landscaped island on Milkshake Lane, and would greatly impact Tree #2, the impressive 52" Copper Beech (Fair condition) which is the oldest tree on the site at well over 100 years old. It would also substantially impact Tree #3, a 44" Pecan (Fair condition).
- B. Would require a breakthrough in the landscaped island on Milkshake Lane, and would greatly impact Tree #2, the impressive 52" Copper Beech (Fair condition) which is the oldest tree on the site at well over 100 years old. It would also substantially impact Tree #3, a 44" Pecan (Fair condition), and Tree #4, a 38" Pecan (Fair Condition).
- C. Would require truncating the landscaped island on Milkshake Lane, and would most likely impact Tree #10 also, but would include significant impacts to Tree #4, a 38" Pecan (Fair).
- D. This entry alternative would avoid the largest trees along Milkshake Lane, and would preserve Tree #10, but would require the removal of Tree #18, a 29" pine (Fair condition) and Tree #19, a 30" willow oak (Good condition).

In reviewing the options for accessing the site, the entry point selected minimizes impacts to the largest trees, and those in the best condition, associated with the Historic House, and does not require modification to the landscaped island on Milkshake Lane.



**TREE # 13**

**DESCRIPTION**

28" Red Maple

**CONDITION**

FAIR (63%)

English ivy vine cover, broken limbs, weak union.

**PHOTO**



## REASON FOR REMOVAL

This tree is located within the access road which has been located in the area of the existing driveway.

## ALTERNATIVES ANALYSIS

The tree is located within the proposed access road. The alternatives analysis for the entry point described for tree #10 also apply to Tree #13. In addition, however, options to avoid this tree by routing the road to the North or South of Tree #13 would impact other priority trees that are larger, older, and in better condition.



In analyzing alternative routing that would preserve tree #13, the resultant impacts were far greater than the routing selected:

- A. Routing to the North of Tree #13 would greatly impact Tree #4, a 38" Pecan (Fair Condition).
- B. Routing to the South of Tree #13 would greatly impact Tree #19, a 30" willow oak (Good condition).

The routing selected minimizes impacts to adjacent, larger, older trees in better condition than Tree #13.



**TREE #**            **20**

**DESCRIPTION**

21" Red Maple

**CONDITION**

POOR (41%)

Broken leaders, broken limbs, weak union and serious decline

**PHOTO**



*Broken Co-Dominant leader*





**REASON FOR REMOVAL**

This tree is in serious decline, and is a safety hazard.

**ALTERNATIVES ANALYSIS**

Tree #20 is outside of the proposed LOD, and could be preserved, but based upon the recommendation of our arborist, the tree is in serious decline, is a safety hazard, and must be removed. The tree will be removed by a qualified Arborist "by hand" to minimize potential impact to adjacent trees.

**TREE #**            **50**

**DESCRIPTION**

30" Black Locust

**CONDITION**

POOR (44%)

Sever crown dieback, broken limbs, weak union, serious decline

**PHOTO**



**REASON FOR REMOVAL**

Though this tree is located within the LOD, it was not a candidate for preservation as the tree is in serious decline, and is a safety hazard.

**ALTERNATIVES ANALYSIS**

N/A

**TREE #**            **56**

**DESCRIPTION**

46" Boxelder

**CONDITION**

FAIR (58%)

Large area of decay in the main trunk and large broken leader with significant decay and general crown decline

**PHOTO**



**REASON FOR REMOVAL**

Though this tree is located within the LOD, it was not a prime candidate for preservation as the tree is in decline.



## ALTERNATIVES ANALYSIS

The tree could potentially be preserved by introducing front loaded townhouses adjacent to units 4 and 5, and adding an additional townhouse at the end of unit 11. While this would preserve the tree, it would introduce an undesirable architectural element – which is front loaded garages.

Given the fair (and declining) condition of the tree, and the desire to preserve a neo-traditional layout and design, development was concentrated in this area of the site in order to preserve other trees in the immediate area, most notably Tree #59, a 25" American Elm in good condition.



**TREE #**            **63**

**DESCRIPTION**

34" Pecan

**CONDITION**

GOOD (70%)

Trunk decay, broken limbs and vines

**PHOTO**



**REASON FOR REMOVAL**

This tree is located in an area within the LOD proposed for housing units.

## ALTERNATIVES ANALYSIS

In developing the plan for the site, emphasis was given to preserving the following key environmental and site features:

1. Viewshed from Milkshake Lane
2. The Historic Home, and older trees located around the historic home
3. The setting of the Historic Home

In addition, attention to architecture and creating an interesting “sense of place” were important to both developer and City. In doing so, a neo-traditional layout was developed which includes alleys, a mix of units, rear-loaded garages, and other elements which create an interesting and vibrant streetscape. Front-loaded garages were eliminated entirely from the plan.

Being responsive to all of these elements necessarily created open space at the “front” on the site along Milkshake Lane, preserved areas around the Historic House, and concentrated any development to the “back” of the site. In addition, the total number of dwelling units (27) is significantly less than what would be permissible (maximum of 35).

Tree #63 could conceivably be preserved if the townhouses in that section of the development were reoriented, and front-loaded garages introduced as conceptually shown below:





Based upon clustering the development to this section of the property, preserving the other key priority elements of the site, and implementing a neo-traditional layout which excludes front-loaded garages, the layout as proposed is preferable.

**TREE # 92**

**DESCRIPTION**

39" Black Cherry

**CONDITION**

POOR (47%)

Co-dominant leaders and weak structure, large dead and broken limbs and crown decline

**PHOTO**



**REASON FOR REMOVAL**

This tree is in serious decline, and is a safety hazard.

**ALTERNATIVES ANALYSIS**

N/A



The following describes the above requested variance in further detail and provides additional justification in accordance with COMAR 08.19.04.10:

A. An applicant may request a variance from this subtitle or the requirements of Natural Resources Article, §§5-1601---5-1612, Annotated Code of Maryland, if the applicant demonstrates that enforcement would result in unwarranted hardship to the applicant.

B. An applicant for a variance shall:

(1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;

**Comment: Several conditions peculiar to this property would cause unwarranted hardship.**

- **In an effort to preserve as much of the existing trees as possible as well as the historic structure and surrounding trees, development is being clustered and concentrated to the southern end of the site.**
- **Trees #10 and #13 are located in close proximity to the existing driveway and proposed main access road off of Milkshake Lane, which is the sole access to the property. Alternatives analysis has shown that this access point and approach is the least impactful routing. Both trees are in Fair Condition, and alternative routing of the access road would impact larger and older trees in better condition.**
- **Tree #20 is outside LOD but in poor condition, is a safety hazard, and must be removed.**
- **Tree #50 is in Poor condition, is a safety hazard, and must be removed.**
- **Tree #56 is in Fair condition, but is in decline. Due to the concentration of development to the areas of the site furthest away from the Historic Home, and the implementation of a neo-traditional design, preservation of this tree is not feasible without adjusting the plan to introduce front-loaded garage, an aesthetic that is not recommended by the City.**
- **Tree #92 is in Poor condition, is a safety hazard, and must be removed.**

- **Tree #63 is in Good condition, however, due to the concentration of development to the areas of the site furthest away from the Historic Home, and the implementation of a neo-traditional design, preservation of this tree is not feasible without adjusting the plan to introduce front-loaded garage, an aesthetic that is not recommended by the City.**
- **Preservation of these specimen trees would also cause an unwarranted hardship through:**
  - **Restricting access to the Property**
  - **Preservation of trees that are in decline and a safety hazard**
  - **Introduction of design elements (front loaded garages) that are not acceptable to the City.**

(2) Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;

**Comment: The Applicant has completed alternatives analysis for each tree proposed to be removed, and has developed the most sensitive approach to preserving those trees that are worthy of preservation. Other similarly zoned properties that encounter trees in a similar condition and in a similar location on a site would be provided the same considerations during the review of the required variance application. Furthermore, trees with similar circumstances on other properties are routinely granted variance for removal.**

(3) Verify that the granting of this variance will not confer on the applicant a special privilege that would be denied to other applicants;

**Comment: Granting this variance is consistent with past grants of variances and thus will not confer a special privilege to the applicant as compared to others. The applicant is proposing to remove six (6) trees that are in fair or worse condition and that pose a risk to life and property, declining health and does not warrant preservation. Six (6) trees are located within the development areas which are being clustered on the site to preserve other areas of existing trees. Tree #63 is in good condition, but cannot be preserved given its location within the center of the clustered development, and the desire to maintain a neo-traditional design approach. Therefore, no special privilege is afforded this applicant.**

- (4) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant.

**Comment: This variance is not the result of actions by the applicant. The removal of the seven (7) trees is due to their condition and location on the site, as well as the limitations for site design based on other regulated environmental features.**

- (5) Verify that the variance request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

**Comment: The request to remove the seven (7) trees does not arise from any condition on a neighboring property.**

- (6) Verify that the granting of a variance will not adversely affect water quality.

**Comment: To ensure that there are no adverse effects on waterways in the immediate area of the project or the watershed in general, all grading and construction will be in accordance with an MDE-approved Erosion and Sediment Control Plan that provides for adequate sediment and erosion control, and post disturbance stormwater management.**

In your review of the variance request it should be noted that with the planned development and the approved Forest Conservation Plan, tree replacement mitigation is being proposed for all trees to be removed.

I trust that the above information will meet with your approval and a favorable variance decision can be issued to the applicant. If you should have any questions require any additional information please do not hesitate to contact me at 410-897-9290.

Sincerely,  
Bay Engineering, Inc.



Terry Schuman, P.E.

Cc: Mike Burlbaugh – Elm Street Development  
Cary Hulse – Davey Tree